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CHARLES ELMORE CROPLEY
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IN THE

Supreme Court of the United States

No. 466.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, ET AL.,
Appellants,

vs.

THE UNITED STATES OF AMERICA, ET AL.,
Appellees.

APPEAL FROM THE DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS. EASTERN DIVISION.

STATEMENT OF BASIS ON WHICH COURT HAS JURISDICTION TO REVERSE DECREE ON APPEAL.

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By this suit, the appellants sought to enjoin, suspend, and set aside an order of the Interstate Commerce Commission requiring appellants to cancel certain proportional rates on grain and grain products from stations on their lines of railroad in Kansas,

Colorado, and Nebraska to Kansas City, Missouri, and Wichita, Kansas, which rates were applicable only when said grain or grain products were forwarded beyond Kansas City or Wichita to ports upon the Gulf of Mexico for export and when the rail movement beyond Kansas City or Wichita was via certain other lines of railroad named in said tariffs. The suit was heard by a three-judge court convened pursuant to the Act of Congress of October 22, 1913, 38 Statutes at Large, 220 (Code of Laws of the United States, Title 28, Section 47). On June 4, 1928, a final decree was made by the court against the appellants dismissing their petition and sustaining the order of the Interstate Commerce Commission. From that decree appellants have appealed to the Supreme Court of the United States.

1. The jurisdiction of this court to review said decree on appeal is sustained by the following statutory provisions:

The Act of October 22, 1913, entitled, "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year 1913 and for other purposes" (38 Statutes at Large, 219) confers upon the District Courts the jurisdiction theretofore vested in the Commerce Court, including jurisdiction over all suits brought to enjoin, suspend, annul or set aside any order of the Interstate Commerce Commission. The same Act provides with reference to an appeal from a final decree of the District Court in such an action, as follows:

> "A final judgment or decree of the District Court may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court

be taken by an aggrieved party within sixty days after the entry of such final judgment or decree, and such appeals may be taken in like manner as appeals are taken under existing law in equity cases."

38 Statutes at Large, 220; Code of Laws of the United States, Title 28, Sec. 47.

By the Act of February 13, 1925, entitled "An act to amend the Judicial Code and to further define the jurisdiction of the Circuit Courts of Appeals and of the Supreme Court, and for Other Purposes," Section 238 of the Judicial Code was amended to provide:

"A direct review by the Supreme Court of an interlocutory or final judgment or decree of a District Court may be had where it is so provided in the following Acts or parts of Acts, and not otherwise:

* * * * * * *

"(4) So much of 'An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year 1913, and for other purposes', approved October 22, 1913, as relates to the review of interlocutory and final judgments and decrees in suits to enforce, suspend or set aside orders of the Interstate Commerce Commission other than for the payment of money."

43 Statutes at Large, 938; Judicial Code, Sec. 238; Code of Laws of the United States, Title 28, Sec. 345.

2. The decree sought to be reviewed upon this appeal was made and entered on the 4th day of June, 1928. Said decree appears at page 93 of the original record*

*All page references to the record are to the original record which has not been printed at the time this statement is filed.

on file in this Court and the date of making and entry thereof is specified at page 92 thereof. The petition for appeal herein was presented and the order of said District Court was made on the 22nd day of June, 1928. Said petition for appeal appears at page 95 of said record and said order allowing said appeal at page 102 thereof.

3. This suit was instituted by appellants for the purpose of enjoining, suspending, and setting aside a certain order of the Interstate Commerce Commission. The petition and bill for injunction of the appellants filed in the United States District Court for that purpose appear at page 4 of the record herein. The order of the Interstate Commerce Commission involved herein was made by the Interstate Commerce Commission on July 6, 1927, in a certain proceeding instituted by the Commission upon complaint entitled "Investigation and Suspension Docket No. 2813." The order of the Interstate Commerce Commission required the appellants to cancel within the time specified therein certain proportional rates upon grain and grain products from stations on their lines of railroad in Kansas, Colorado, and Nebraska to Kansas City, Missouri, and Wichita, Kansas, which rates were applicable only when said grain or grain products were forwarded beyond Kansas City or Wichita to ports upon the Gulf of Mexico for export and when the rail movement beyond Kansas City or Wichita was via certain other lines of railroad named in said tariffs. The effect of said order of the Interstate Commerce Commission was to require appellants without their consent and over their protest to participate with certain connecting railroads at Kansas City and Wichita in through routes and through rates from points on their lines of

railroad in Kansas, Colorado, and Nebraska to said Gulf ports for export, and thus deprive them of the long haul upon said traffic, each of your appellants having reasonably short and direct routes of their own, from said points of origin to said ports on the Gulf of Mexico, or routes embracing substantially the entire length of their systems between said termini. The petition and bill for injunction of the appellants alleged and asserted that the order of the Interstate Commerce Commission was void upon the above grounds and other grounds more particularly stated in the assignments of error (page 97 of the record). After hearing by the District Court of the United States a decree was made and entered by it on June 4, 1928, dismissing the petition and bill of appellants and sustaining the order of the Interstate Commerce Commission (page 93 of the record). This decree of the District Court of the United States constituted a final judgment within the meaning of the Act of Congress of October 22, 1913, 38 Statutes at Large, 220, and pursuant to the provisions thereof and of the Act of Congress of February 13, 1925, 43 Statutes at Large, 938, a direct review by the Supreme Court of the United States of this final judgment and decree may be had.

In the said order of the Interstate Commerce Commission of July 6, 1927, the appellants were required to cancel their said proportional rates on grain and grain products described as aforesaid, on or before August 25, 1927, upon one day's notice to the public and to the Interstate Commerce Commission; but said effective date of said order of the Commission was postponed by it from time to time upon request of appellants and the filing of their consent to the extension of the statutory period of suspension for such times,

and the effective date of said order of the Commission of July 6, 1927, has now, upon the filing by appellants of their consent to the extension of the statutory period of suspension for such time, by appropriate action of the Commission, been extended to August 9, 1929.

4. Cases which sustain the jurisdiction of this Court to review said decree are as follows:

Virginian Railway Company v. United States, 272 U. S. 658;

United States v. New York Central Railroad Co., 263 U. S. 603;

Dayton-Goose Creek Ry. Co. v. United States, 263 U. S. 456;

Stafford v. Wallace, 258 U. S. 495, 512;

Louisville & Nashville Railroad Co. v. United States, 238 U. S. 1;

United States v. The Baltimore and Ohio R. R. Co., 225 U. S. 306.

Respectfully submitted,

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